SUPREME COURT, U.S.
FILED

No. 03 1325 MAR 8 2004

In the

United States Supreme Court

CAITLIN GREY,
Petitioner,

v.

STATE OF NEW JERSEY
and SCOTT DENNIS,
Respondents.

On Petition For A Writ of Certiorari To The United States Court of Appeals For The Third Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the lower courts in the Third Circuit misconstrued the Rooker-Feldman doctrine in such a manner as to deprive petitioner's constitutional rights to due process.

2. Whether abstention was improper in view of petitioner's request for prospective declaratory judgment.

LIST OF PARTIES

The parties below were Caitlin Grey, petitioner-plaintiff, and the State of New Jersey and Scott Dennis, defendants.

CORPORATE DISCLOSURE

Not applicable.

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PETITION FOR A WRIT OF CERTIORARI

Honorable Chief Justice Rehnquist and Associate Justices of the Supreme Court of the United States:

Petitioner Caitlin Grey respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit entered December 8, 2003.

OPINIONS BELOW

The Court of Appeals' decision and judgment are set forth in *Appendix A*. The district court's decision and order are set forth in *Appendix B*.

STATEMENT OF JURISDICTION

Judgment of the Court of Appeals was filed December 8, 2003. The Court has jurisdiction under 28 U.S.C. § 1254(1) and Rule 13.1 of the Supreme Court Rules.

RELEVANT CONSTITUTIONAL PROVISION

U.S. Const. Amend XIV

> . . . nor shall any State deprive any person of life, liberty, or property without due process of law; . . .

RELEVANT STATUTE

42 U.S.C. § 1983.

> Every person who, under the color of any statute, ordinance, regulation, custom or usage of any state . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any fights, privileges or immunities secured by the constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress.

STATEMENT OF THE CASE

1. Between 1990 and 1995, plaintiff, as an attorney, was retained by defendant Scott Dennis, as client, to handle certain legal matters arising in the Commonwealth of Pennsylvania, including a real estate transaction and a negligence action against a property inspection service and others. A064.

2. Although plaintiff was admitted to practice in both New Jersey and in Pennsylvania, all services rendered for defendant Dennis were for matters arising under Pennsylvania law, and situated there. Id.

3. In February 1996, defendant Dennis filed a "Fee Arbitration Request Form" with the New Jersey Supreme Court, District IV Fee Committee, seeking fee arbitration under New Jersey Court Rule 1:20A-3(b) et seq. A064-65.

4. The basis of such arbitration rule is defendant New

Jersey's authority to regulate ethics of attorneys licensed and practicing within its jurisdiction, but does not extend to matters handled in another jurisdiction even by an attorney admitted within New Jersey. A065.

5. Because the matters for which plaintiff was retained were Pennsylvania matters, defendants had no subject-matter jurisdiction to entertain defendant Dennis' fee arbitration request. Defendants nevertheless proceeded to assert jurisdiction in violation of Pennsylvania's own jurisdiction to regulate attorney conduct arising in the scope of Pennsylvania-related matters. Id.

6. As a result of defendants' wrongful assertion of jurisdiction, plaintiff was prejudiced by an adverse determination in the fee arbitration, and has thereby been damaged economically and deprived of her constitutional rights to procedural and substantive due process, and equal protection, under the Fourteenth Amendment to the United States Constitution. Id.

7. Plaintiff filed a declaratory judgment action in the District of Pennsylvania in March 2001. The action was transferred to the District of New Jersey for improper venue. The case was docketed in the District of New Jersey in February 2002. See A001 et seq (docket entries).

8. New Jersey moved for judgment on the pleadings in March 2002. A006 to A061.

9. In May 2002, plaintiff filed an amended complaint addressing technical matters, but the substance of the complaint remained the same since it was originally filed in the District of

Pennsylvania.

10. In May 2002, plaintiff cross-moved for judgment on the pleadings. A069.

11. Defendant Scott Dennis moved for summary judgment on the merits. See A004 (docket entries).

12. On November 27, 2002, the District of New Jersey, by Rodriguez, J., entered an order dismissing the action on the Rooker-Feldman, federal-state comity doctrine.

13. Notice of appeal was timely filed on December 17, 2002.

14. The Court of Appeals affirmed in an unpublished opinion filed December 8, 2003.

REASONS FOR GRANTING A WRIT

I

BECAUSE THE DECISIONS OF THE COURTS BELOW EFFECTIVELY DENIED DUE PROCESS, THE COURT SHOULD REVIEW THE DECISIONS BELOW AND REVERSE ON THE LAW

The lower courts erred as a matter of law in holding that the Rooker-Feldman doctrine precludes the action filed below, which sought a *prospective* declaratory judgment.

A. Plaintiff's Valid Section 1983 Claims

The law is settled that private parties who act in concert

with officers of the state are acting under color of state law within the meaning of 42 U.S.C. § 1983. Dennis v. Sparks, 449 U.S. 24, 29 (1980); Black v. Bayer, 672 F.2d 309, 318 (3d Cir. 1982); Vuksta v. Bethlehem Steel Corp., 540 F. Supp. 1276, 1281 (E.D. Pa. 1982); Ungar v. Hacker, 578 F. Supp. 143, 143-44 (E.D. Pa. 1983).

The law is far more settled that state courts and bar regulators are subject to 1983 suits, particularly for injunctive relief, where they are engaged in policies under state law that deny plaintiffs' constitutional rights. Section 1983 of the reconstruction era Civil Rights Act provides:

> Every person who, under the color of any statute, ordinance, regulation, custom or usage of any state . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any fights, privileges or immunities secured by the constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress.

42 U.S.C. § 1983.

To state a claim under § 1983, a complaint must allege that the conduct complained of must have been (1) committed by an individual or entity acting under "color of state law" and (2) must have deprived the plaintiff of a right or privilege secured by the constitution or laws of the United States. West v. Atkins, 487 U.S. 42 (1988); Parratt v. Taylor, 451 U.S. 527, 535 (1981); Haley v. Pataki, 883 F. Supp. 816, 825 (N.D.N.Y. 1995).

Section 1983 "establishes a federal cause of action for

damages against persons acting under state and local laws, who have caused individuals to suffer a constitutional deprivation, and was designed to protect them against a [misuse of power . . . made possible only because the wrongdoer is clothed with the authority of state law . . . ." Duchesne v. Sugarman, 566 F.2d 827, 829 (2d Cir. 1977) (citing United States v. Classic, 313 U.S. 299, 326 (1941)).

A key question in a § 1983 case is whether the alleged violation stems from conduct fairly attributable to the state or municipal governmental action. Liability attaches if an "action pursuant to official . . . policy of some nature caused a constitutional tort." Jett v. Dallas Indep. Sch. District, 491 U.S. 701,729 (1989) (quoting Monell v. Department of Social Servs., 436 U.S. 658, 691 (1978)). "[O]nly those municipal officers who have final policy making authority may by their actions subject the government to § 1983 liability." City of St. Louis v. Praprotnik, 485 U.S. 112, 123, (1988) (plurality opinion) (internal quotation omitted.)

As for the requirement that the deprivation be "under color of law," actions of governmental officials, such as those of the Fee Arbitration Committee, acting under their state authority, are "under color of state law" for purpose of § 1983. See, e.g. Buxton v. Lovell, 559 F. Supp. 979 (D. Ind. 1983) (holding that the complaint sufficiently pled 1983 allegations against a professional review board). Plaintiff has a right and a privilege not to have her property and liberty interest impaired without some minimal standard of protection. Yet, the State defendants, established under color of state law and clothed with authority thereunder, subjected plaintiff to an arbitrary deprivation of her rights in violation of the substantive and procedural due process clauses of the Fourteenth Amendment. See,e.g. Taylor Inv., Ltd. v. Upper Darby Tp., 983 F.2d 1285, 1292

(3rd Cir. 1993). This triggered plaintiff's section 1983 rights.

Applying these principles to the facts, as quoted above, paragraph 29 of the complaint, read in light of the previous 28 paragraphs, amply alleges that plaintiff's rights were deprived by Defendants acting under a joint, cooperative conspiracy under state law. Cases applying 1983 to state bar regulators are myriad. Erdmann v. Stevens, 458 F.2d 1205 (2d Cir.), cert. denied, 409 U.S. 889 (1972); Louis v. Supreme Court of Nevada, 490 F. Supp. 1174 (D. Nev. 1980); Civil Rights Research Council, Inc. v. Wadmond, 299 F. Supp. 117 (S.D.N.Y.), aff'd on other grounds, 401 U.S. 154 (1969); Taylor v. Kentucky State Bar Assn., 424 F.2d 478 (6th Cir. 1970); Eisenberg v. Boardman, 302 F. Supp. 1360 (D. Wis. 1969); Keenan v. Bd. of Law Examiners, 317 F. Supp. 1350 (D. N.C. 1970).

B. The Improper Rooker-Feldman defense

The State asserted no fewer than fourteen separate affirmative defenses in the answer dated May 1, 2001, see Answer, but "Rooker-Feldman" was nowhere asserted in its answer. Despite this fact, the lower courts applied this doctrine to dismiss plaintiff's suit below.

C. The Lower Courts Misunderstood and Misapplied the Rooker-Feldman

The Rooker-Feldman doctrine prevents federal courts from acting as appellate courts to review state court decisions. Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923); D.C. Court of Appeals v. Feldman, 460 U.S. 462 (1983). But this is clearly not a situation where plaintiff is seeking "review" of state court orders, but a situation where a demonstrated, undeniable

violation of the federal constitution has resulted in the New Jersey state courts' invalid orders.

Plaintiff is not "appealing" from the New Jersey courts' application of the fee arbitration rules to plaintiff's services rendered for defendant Dennis. Instead, plaintiff seeks declaratory judgment and related injunction that New Jersey has no authority to regulate the conduct of attorneys licensed in Pennsylvania, as it relates to services rendered on Pennsylvania legal matters for Pennsylvania clients, because to do so would, ultimately, interfere with the Commonwealth's jurisdictional integrity of supervising lawyers under its jurisdiction.

Two cases decided by lower courts, although not binding on this Court, are persuasive and the Court should adopt their reasoning. First, Kelley Drye & Warren v. Murray Ind.,Inc., 623 F. Supp. 522 (D.N.J. 1985), an out-of-state law firm's challenge against New Jersey's fee-arbitration rules, provides that "the existence of the fee arbitration rule cannot deprive the [federal] court of that jurisdiction[]" — i.e., to review the constitutional propriety of the fee arbitration process. Id. at 525-26 (ultimately holding that a New York law firm which rendered services in New Jersey was properly subject to New Jersey fee arbitration rules because it provided service in the New Jersey matter).

Second, in Fink v. Supreme Court of PA, 651 F. Supp. 1238 (M.D. Pa. 1987), a state judge and a citizens' group sought equitable remedies against his reassignment within the court system, as being in violation of his constitutional rights. The Commonwealth moved to dismiss on various grounds, but the court refused, stating, in language on "all fours" with our case:

[Plaintiffs] are not attacking the Commonwealth or

> the laws of the Commonwealth but they are alleging that the Supreme Court of Pennsylvania, the Board and the Chairman, Executive Director and Prosecutor of the Board have acted outside both state and federal law. A United States district court may always act and indeed may be obliged to act when suit alleging violations of federal law is brought against state officials.

Id. at 1244.

Had plaintiff raised the constitutional questions asserted in her complaint below during the fee-arbitration proceedings at the state level, plaintiff would, of course, effectively be precluded from re-litigating the same constitutional issues before any federal court. Tang v. Appellate Division, NY Supreme Court, First Dept., 487 F.2d 138 (2d Cir.) (affirming district court's dismissal of action), cert. denied, 416 U.S. 906 (1974); Goodrich v. Supreme Court of S.D., 511 F.2d 316 (8th Cir. 1996) (holding that injunctive relief is proper, and overruling the state's Eleventh Amendment defense).

However, plaintiff was provided no opportunity and no forum for asserting such federal constitutional rights, and therefore she has been relegated to asserting her rights through the declaratory judgment action filed below.

Because the district court's reliance on Rooker-Feldman is grossly misplaced, as a matter of law, its order of dismissal filed November 27, 2002, should be reversed and the case should reinstated before a different judge.

Even if the Court were to consider the merits of the State's

belated reliance on Rooker-Feldman, the Court should overrule the defense. One case, decided in this jurisdiction is squarely on point. Kelley Drye & Warren v. Murray Ind., Inc., 623 F. Supp. 522 (D.N.J. 1985), an out-of-state law firm's challenge against New Jersey's fee-arbitration rules, provides that "the existence of the fee arbitration rule cannot deprive the court of that jurisdiction[]" -- i.e., jurisdiction to review the propriety of the fee arbitration procedure. Id. at 525-26 (ultimately holding that a New York law firm which rendered services in New Jersey was subject to New Jersey fee arbitration rules).

In Fink v. Supreme Court of PA, 651 F. Supp. 1238 (M.D. Pa. 1987), decided in a neighboring jurisdiction, a state judge and a citizens' group sought equitable remedies against his reassignment within the court system, as being in violation of his constitutional rights. The Commonwealth moved to dismiss on various grounds, but the court refused, stating, in language on "all fours" with our case:

> [Plaintiffs] are not attacking the Commonwealth or the laws of the Commonwealth but they are alleging that the Supreme Court of Pennsylvania, the Board and the Chairman, Executive Director and Prosecutor of the Board have acted outside both state and federal law. A United States district court may always act and indeed may be obliged to act when suit alleging violations of federal law is brought against state officials.

Id. at 1244.

Rooker-Feldman prevents federal courts from acting as appellate courts to review state court decisions, D.C. Court of

Appeals v. Feldman, 460 U.S. 462 (1983), Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923), but this is clearly not the case here. Plaintiff is not "appealing" a New Jersey judicial decision. Plaintiff is requesting a declaratory judgment and related injunction holding that New Jersey has no authority to regulate the conduct of attorneys licensed in Pennsylvania, as it relates to services rendered on Pennsylvania legal matters for Pennsylvania clients, because to do so would, ultimately, interfere with the Commonwealth's jurisdictional integrity of supervising lawyers under its jurisdiction.

It should also be observed that, had plaintiff raised the constitutional questions asserted in her complaint during the fee-arbitration proceedings, plaintiff would, of course, be barred from re-litigating the same constitutional issues before this Court, or any other court. Tang v. Appellate Division, NY Supreme Court, First Dept., 487 F.2d 138 (2d Cir.) (affirming district court's dismissal of action), cert. denied, 416 U.S, 906 (1974); Goodrich v, Supreme Court of S.D., 511 F.2d 316 (8th Cir. 1996) (holding that injunctive relief is proper, and overruling the state's Eleventh Amendment defense). However, plaintiff was provided no opportunity and no forum for asserting such constitutional rights, and therefore has been relegated to asserting her rights through this declaratory judgment action.

Because the State's reliance on Rooker-Feldman is improper (as not raised in their answer), and, in any event, misplaced as a matter of law, this argument should be rejected.

D. Subject-matter Jurisdiction May Not Be Conferred by Agreement or Waiver

The State proffers a letter dated January 21, 1996, from

plaintiff to her former client, in the nature of a pre-arbitration notice under the New Jersey Rules of Court, as a basis to argue that "jurisdiction" was proper in the New Jersey state court system. The Court of Appeals apparently found that significant. See App-4, infra. A real consideration of the document requires a more thorough review of disputed facts because plaintiff hereby proffers, and respectfully maintains, that at the time she wrote that letter, plaintiff was advised by her former client that his principal residence was in New Jersey. Facts about plaintiff's mistaken belief that Dennis was or was not a New Jersey resident need not be addressed at all: all defendants in this action have admitted or conceded: (1) that Dennis was never a New Jersey resident (although he had residences in Pennsylvania and California during the period of plaintiff's representation); and (2) all professional services were provided on account of matters arising under Pennsylvania law and situated there. Compl. ¶ 17. Accordingly, the issue is factually moot.

As a matter of law, subject-matter jurisdiction of courts may not be conferred by agreement, waiver or any other method other than factors actually supporting jurisdiction. Judge Smith stated that the jurisdictional defect warrants a swift dismissal, rejecting the subject-matter by consent, waiver or "invitation" argument from Dennis on August 3, 2001, the same argument the State asserts in this federal case:

> THE COURT: Invitation presupposes ability to invite. How do you invite someone to come dispute their fee in New Jersey if it doesn't involve a New Jersey matter?
>
> I never knew it was [a Pennsylvania case] or I would have thrown it out then.

Exhibit 2, August 3, 2001 Tr., at 10:5-12.

When Dennis advanced the same argument yet again in a subsequent hearing on September 14, 2001, Judge Smith again observed:

> "The only question is did this Fee Dispute Committee have any jurisdiction over this matter at all, and even if they rendered a decision . . . it's for nought because jurisdiction can always be questioned, even after the fact. I don't think they [the Fee Arbitration Committee] ever had any jurisdiction in this matter at all and what they did was for nothing."

Exhibit 3, September 14, 2001 Tr., at 5:13-20.

Judge Smith went so far as to direct the parties to bring the jurisdictional problem to the attention of the United States District Court:

> THE COURT: Right. [the case is stayed.]. But you tell . . . the District Court that Judge Smith said that there was no jurisdiction for that Fee Dispute Committee and therefore, they [the Committee] shouldn't have taken any action. [Emphasis added.]

Exhibit 3, September 14, 2001 Tr., at 13:21-24.

This is a well-settled principle of law in New Jersey, e.g. NJ Citizen Action v. Riviera Motel Corp., 296 N.J. Super. 402 (App. Div.), certif. granted, 152 N.J. 13 (1997). Accordingly, the

State is hardly in a position to assert that plaintiff's letter, legally mistaken as Dennis concedes, but clearly consistent with prudent practice in the circumstances, is somehow a "basis" for supporting subject-matter jurisdiction in an improper forum.

E. Plaintiff Should Be Granted Judgment On the Pleadings with a Declaration That New Jersey May Not Regulate Attorney Conduct Arising in and Relating to Another State's Legal Matters

The New Jersey attorney-client fee arbitration procedure, Rule 1:20A, is set forth in the Rules of Court promulgated by authority of the New Jersey Supreme Court. The New Jersey Supreme Court has plenary authority over the practice of law within New Jersey. N.J. Const. art. IV, § 2, ¶ 3; In re Opinion No. 26 of Comm. on Unauthorized Practice of Law, 139 N.J. 323,326 (1995). It is undisputed that New Jersey may adopt "reasonable rules of general application governing the professional conduct of attorneys, both in and out of court[,]" American Trial Lawyers Ass'n v. New Jersey Supreme Court., 126 N.J. Super. 577, 585-86 (App. Div.), affd. 66 N.J. 258 (1974), so long as they arise from legal matters handled within New Jersey, e.g. Peteroy v. Trichon, 302 N.J. Super. 44 (App. Div. 1997) (applying New Jersey contingency rules to out-of-state lawyers who handled New Jersey legal matter).

The core issue before the Court is whether New Jersey's lawyer regulatory laws and rules – i.e., the fee-arbitration policy and procures – may be enforced against a lawyer licensed in another state, who rendered services in the other state, in connection with matters arising under the laws of the other state, on behalf of a client from the other state, namely the

Commonwealth of Pennsylvania. As a matter of sound constitutional law, the Court should declare that New Jersey may not apply its lawyer-regulatory policy to events occurring in Pennsylvania, as being in violation of one or more constitutional provisions, including the due process clause, equal protection clause, and the commerce clause.

The controlling case law is well settled. As a matter of state law, the New Jersey Appellate Division has squarely held that the arbitration rules do not apply to, and the fee arbitration committee has no jurisdiction over, an attorney who did not appear in any legal matter "within the borders of New Jersey." Lopez v. Pitula., 271 N.J. Super. 116, 124 (App. Div. 1994) (holding that the fee arbitration committee in New Jersey was without jurisdiction as against New York attorney who represented a New Jersey resident in New York). On the other hand, the New Jersey courts, and hence its disciplinary system, clearly have jurisdiction over someone engaged in the practice of law without a license because this type of conduct squarely implicates the heath, safety and welfare of citizens "within the borders of New Jersey." See, e.g. In re Waring's Estate, 47 N.J. 367, 375-78 (1966); Rule 1:22.

As a matter of constitutional jurisprudence, in Bigelow v. Virginia, 421 U.S. 809, 823-25 (1975), the Supreme Court explained the constitutional limits of a state's police powers to regulate even the actions of licensed professionals, holding:

> Moreover, the placement services advertised in appellant's newspaper were legally provided in New York at that time. The Virginia Legislature could not have regulated the advertiser's activity in New York, and obviously could not have

> proscribed the activity in that State. Huntington v. Attrill, 146 U.S. 657, 669 (1892). Neither could Virginia prevent its residents from traveling to New York to obtain those services or, as the State conceded, Tr. of Oral Arg. 29, prosecute them for going there. See United States v. Guest, 383 U.S. 745,757-59 (1966); Shapiro v. Thompson, 394 U.S. 618, 629-31 (1969); Doe v. Bolton, 410 U.S., at 200. Virginia possessed no authority to regulate the services provided in New York - the skills and credentials of the New York physicians and of the New York professionals who assisted them, the standards of the New York hospitals and clinics to which patients were referred, or the practices and charges of the New York referral services. [Emphasis added.]
>
> A State does not acquire power or supervision over the internal affairs of another State merely because the welfare and health of its own citizens may be affected when they travel to that State. It may seek to disseminate information so as to enable its citizens to make better informed decisions when they leave. But it may not, under the guise of exercising internal police powers, bar a citizen of another State from disseminating information about an activity that is legal in that State.

The Supreme Court warned that if Virginia's attempt to inter-meddle in New York matters were allowed, "Virginia might exert the power sought here over a wide variety of national publications or interstate newspapers carrying

advertisements similar to the one that appeared in Bigelow's newspaper or containing articles on the general subject matter to which the advertisement referred. Other States might do the same." Id. at 829. Likewise, if New Jersey were allowed to interfere with the attorney-client relationships arising in the Commonwealth, it will undoubtedly interfere with the attorney-client relationships of all fifty states in the Union, simply because the client chooses to improperly file a fee arbitration under New Jersey rules. If all the other states do likewise, the relationships among the states will be a state of palpable chaos.

The Supreme Court has long held that one State's power to impose burdens on interstate commerce is not only subordinate to the federal power to regulate interstate commerce, Gibbons v. Ogden, 9 Wheat. 1, 194-96 (1824), but it must be constrained by "respect" to the other States, see, e.g., Healy v. Beer Institute, 491 U.S. 324, 33536 (1989) (holding that the Constitution has a "special concern both with the maintenance of a national economic union unfettered by state-imposed limitations on interstate commerce and with the autonomy of the individual States within their respective spheres"); Edgar v. MITE Corp., 457 U.S. 624, 643 (1982).

Most recently, in BMW of North America, Inc. v. Gore, 517 U.S. 559 (1996), the Supreme Court reasoned that "it follows from these principles of state sovereignty and comity that a State may not impose economic sanctions on violators of its laws with the intent of changing the tortfeasors' lawful conduct in other States." Id. at 572. To do so, as the State of Alabama did in BMW, "would be infringing on the policy choices of other States[]" to regulate their own interests and their own economies. Id. While Alabama clearly has the power to set "policy in that State[,] Alabama does not have the power, . . . , to punish BMW

for conduct that was lawful where it occurred and that had no impact on Alabama or its residents. Nor may Alabama impose sanctions on BMW in order to deter conduct that is lawful in other jurisdictions." Id. at 572-73.

New Jersey Rules provide for a "notice pleading" in its courts, parallel to the requirements of Rule 8 of the Federal Rules of Civil Procedure, requiring "simple, concise and direct" statements and "no technical forms" are required; and the pleadings "shall be liberally construed in the interest of justice." Rule 4:5-7 (2001). The fee arbitration rules provide that the responding lawyer shall use "an Attorney Fee Response form in a form approved by the Director[,]" but, as to the contents of such response form, there are no technical requirements. Rule 1:20A-3(b)(2) (2001).

When plaintiff was directed to file a response, she filed her written response in the form prescribed by the Fee Committee, Compl. Exhibit 2. The Fee Committee Secretary then evaluated the merits of the response and unilaterally concluded that it was "insufficient." The Fee Committee then "struck" plaintiff's written response and granted default judgment to her former client. Thus, not only did New Jersey deny plaintiff's constitutional rights not to be compelled to arbitrate the Pennsylvania fee dispute, but, having unlawfully compelled arbitration, it then compounded its unlawful actions granting "default judgment" without any basis to do so.

Plaintiff's counsel has been unable to find a single case where a pleading containing "simple, concise and direct" statements has ever been dismissed in the manner plaintiff's response to Dennis' fee request was summarily dismissed with prejudice, by the Fee Committee Secretary, without even so

much as a pre-deprivation hearing. Plaintiff was denied basic fairness under the Fourteenth Amendment. As the Supreme Court reasoned in BMW, at 574, "[e]lementary notions of fairness enshrined in our constitutional jurisprudence dictate that a person receive fair notice not only of the conduct that will subject him to punishment but also of the severity of the penalty that a State may impose." In BMW, the Court found Alabama's punitive damage award against BMW, based on lawful conduct in other states, so excessive as to violate the due process clause. See id. The Fee Committee's actions against plaintiff were so arbitrary and unfair as to violate the due process clause.

Rule 1:20A-1(e) expressly states that "A fee committee shall not render advisory opinions." See Kimm v. Asiatic Accupressure, Inc., 335 N.J. Super. 262 (App. Div. 2002) (reversing the effect of Fee Committee advisory actions). In plaintiff Grey's case, the Fee Committee asserted jurisdiction over another state's issue beyond its own jurisdiction despite the mandate of Rule 1:20A-2 and Lopez, supra, limiting the Fee Committee's authority to "fee disputes between clients and attorneys" arising in New Jersey. Because the Fee Committee acted beyond its own jurisdictional authority, and has violated Grey's constitutional rights, the Court's intervention is necessary and proper. The Court should declare what the parties should have known all along: New Jersey may not regulate lawyer conduct arising in Pennsylvania, over Pennsylvania legal matters, and a Pennsylvania client.

Furthermore, the State defendants, including the Fee Committee Secretary for District IV, have failed to curb their unconstitutional, ultra vires actions, and the Rules of Court dealing with such Committee's "Absence of Jurisdiction," Rule 1:20A-3(c), fails to place proper constitutional limitations on

cases heard by the Committee to those involving legal matters arising in New Jersey. Because the Fee Committee's authority is unconstitutional, and is ongoing, declaratory and injunctive relief is wholly proper, and should be granted.

CONCLUSION

For the foregoing reasons, the Court grant a writ of certiorari and review the decision and judgment of the Court of Appeals.

Dated: March 8, 2004

Respectfully,

Michael S. Kimm

Appendix A

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No.02-4553

CAITLIN M. GREY,
Appellant
v.
STATE OF NEW JERSEY; SCOTT DENNIS;
JOHN OR JANE DOES 1-10*
*(Amended per Clerk's Order dated 1/31/03)

APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF NEW JERSEY
D.C. Civil No. 02-cv-00552
District Judge: The Honorable Joseph H. Rodriguez

Submitted Under Third Circuit LAR 34.1 (a)
November 21, 2003

Before: RENDELL, BARRY, and MAGILL,* Circuit Judges

(Opinion Filed: December 8, 2003)

OPINION

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* The Honorable Frank J. Magill, Senior Circuit Judge, United States Court of Appeals for the Eighth Circuit, sitting by designation.

BARRY, Circuit Judge

There is an old Mexican curse: May you have a lawsuit in which you are sure that you are right. Appellee Scott Dennis can certainly attest to the unfortunate truth of this malediction. In 1996, he prevailed in the arbitration of a fee dispute with his attorney. More than seven years later, he is still attempting to collect his money.

Caitlin M. Grey, Dennis's former attorney, has managed to postpone, by virtue of protracted litigation, the reimbursement of money she owes her client. In the latest phase of her efforts to undermine Dennis's claim. Grey has collaterally attacked the New Jersey State Court fee decision in federal court, raising jurisdictional and constitutional issues. She now appeals the Order of the United States District Court for the District of New Jersey dismissing her complaint pursuant to the Rooker-Feldman doctrine. We have jurisdiction pursuant to 28 U.S.C. § 1291. Our review is plenary, Parkview Associates Partnership v. City of Lebanon, 225 F.3d 321, 323-24 (3d Cir. 2000), and we will affirm.

I. Background

In the early 1990s, Mr. Dennis, a Pennsylvania resident, hired Ms. Grey, an attorney licensed to practice in New Jersey and Pennsylvania, to handle a number of legal matters in Pennsylvania. For reasons not entirely clear from the record, Dennis's claims were dismissed for lack of prosecution.

Understandably, he was displeased, and requested reimbursement from Grey for the fees she had collected from him. In January of 1996, Grey sent a notice to Dennis, advising him that he could have their fee dispute arbitrated through a procedure established under the New Jersey Court Rules. N.J. Court Rule 1:20A-3(b) et seq.

In February of 1996, Dennis filed an Attorney Fee Arbitration Request Form with the New Jersey Arbitration Committee ("Committee") in accordance with New Jersey Court Rules. On February 26, the Committee requested that Grey file an answer within 20 days. She failed to do so; on March 31 st, however, she filed a response that was not only late, but which the Committee, on April 4, rejected as incomplete. The Committee again requested information from her to facilitate assessment of Dennis's claim, and warned her that if she failed to comply, she would be precluded from participating in the arbitration. See N.J. Court Rule 1:20A-3(b)(2) (allowing Committee to preclude participation in arbitration).

Grey was again found non-compliant by the Committee, which, as promised, barred her from further participation in the arbitration. The Committee proceeded, and on June 18, 1996, determined that she should return $10,865.15 of the $13,724.28 in fees that she had collected from Dennis. Grey appealed the Committee's decision to the New Jersey Disciplinary Review Board. Her appeal was unsuccessful.

Dennis filed suit in New Jersey Superior Court seeking entry of a judgment against Grey for $10,865.15; he has been attempting to collect his money ever since. Grey has used a variety of litigation tactics to stall and evade the determination of the Committee.

In the Superior Court, Grey urged the Court to re-examine the merits of the Committee's fee determination. The Court concluded that it lacked jurisdiction to do so. She took an

interlocutory appeal, and on October 4, 1999, the Appellate Division agreed with the Superior Court that the determination of the Disciplinary Review Board was not subject to review. Grey next filed a petition seeking certification of her appeal to the Supreme Court of New Jersey; it was denied on February 15, 2001.

Having exhausted her litigation options in the state courts of New Jersey, on March 30, 2001, approximately five years after the initiation of the fee dispute, Grey filed suit in the U.S. District Court for the Eastern District of Pennsylvania. She alleged for the first time that the Committee lacked jurisdiction to arbitrate a fee dispute between a Pennsylvania lawyer and a Pennsylvania client. She named the State of New Jersey, in addition to Dennis, as a defendant and asserted that New Jersey's exercise of jurisdiction violated the Fourteenth Amendment and 42 U.S.C. § 1983. She also asserted for the first time that the Committee's sanction precluding her participation in the arbitration violated federal constitutional guarantees of Due Process. The case was transferred to the U.S. District Court for the District of New Jersey, which, relying on the Rooker-Feldman doctrine, dismissed the case for lack of subject matter jurisdiction.

II. Discussion

The propriety of the New Jersey Courts' jurisdictional determination is beyond review in this Court. Importantly, before arriving here, this case was considered by the New Jersey Arbitration Committee, the New Jersey Disciplinary Review Board, the New Jersey Superior Court, the New Jersey Appellate Division, and the Supreme Court of New Jersey.

The Rooker-Feldman doctrine prohibits us from reviewing the final determinations of a state court, even those that are erroneous. See District of Columbia Court of Appeals v.

Feldman, 460 U.S. 462,482, (1983) (holding that a lower federal court "has no authority to review final judgments of a state court in judicial proceedings"); Rooker v. Fidelity Trust Co., 263 U.S. 413, 416 (1923) ("no court of the United States other than this Court could entertain a proceeding to reverse or modify the judgment for errors").

We recognize that the issue of subject matter jurisdiction does not appear to have been litigated in the State Court proceedings. This, however, is of no avail to Grey. "Every court in rendering a judgment tacitly, if not expressly, determines its jurisdiction over the parties and the subject matter." Stoll v. Gottlieb, 305 U.S. 165, 171-72 (1938). And, there can "be no doubt that if the question ... had actually been raised and decided . . . that determination would have been final save as it was open to direct review on appeal." Chicot County Drainage Dist. v. Baxter State Bank, 308 U.S. 371, 377-78 (1940).

Of course, as we have often recognized, "it is fundamental that a court may consider jurisdiction on its own. The issue of jurisdiction is always open for determination by the court." In re Orthopedic "Bone Screw" Prods. Liab. Litig., 132 F.3d 152, 156 (3d Cir. 1997) (citing Underwood v. Maloney, 256 F.2d 334 (3d Cir. 1958)). Further, "[i]f a court then determines that it lacks subject matter jurisdiction, it cannot decide the case on the merits. It has no authority to do so." Id. In this case, however, the only relevant jurisdictional question before us is not whether the New Jersey Courts properly had jurisdiction, but whether we may review the New Jersey State Courts' assertion of jurisdiction. The law is clear: under Rooker-Feldman, we may not.

Even were Rooker-Feldman not a bar to Grey's case, res judicata - or claim preclusion - would be. Grey had a full and fair opportunity to contest the jurisdiction of the New Jersey Courts, but chose not to do so. Indeed, she chose the New Jersey

forum, and did not dispute jurisdiction until she had lost on the merits at every level of the New Jersey court system. As the Supreme Court of the United States has explained, jurisdictional determinations are not exempted from the precepts of res judicata:

> A party that has had an opportunity to litigate the question of subject-matter jurisdiction may not... reopen that question in a collateral attack upon an adverse judgment. It has long been the rule that principles of res judicata apply to jurisdictional determinations-both subject matter and personal. Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 702 n.9 (1982) (emphasis added).

Similarly, Grey's constitutional claims are barred by Rooker-Feldman and by res judicata. With regard to Rooker-Feldman, we have held that lower federal courts cannot consider federal questions that are intertwined with state questions where doing so would disturb a state court's determination. Parkview Associates, 225 F.3d at 327. Here, Grey asks us to conclude that the decision to bar her from the arbitration proceedings violated the Constitution. But she has already appealed the Committee's actions all the way to the Supreme Court of New Jersey. That she neglected to couch her claims in constitutional garb before the various State courts does not preserve those claims for our review.

With regard to res judicata, the Supreme Court of United States has long recognized "the competence of state courts to adjudicate federal constitutional claims." Feldman, 460 U.S. at 483. Accordingly, Grey should have pressed her constitutional claims in State court. Because those claims were available, even if not asserted, she must abide by the rule that a judgment upon the merits in one suit is res judicata in another where the parties and subject matter are the same, not only as respects matters actually presented to sustain or defeat the right asserted, but also

as respects any other available matter which might have been presented to that end. Grubb v. Public Util. Comm'n, 281 U.S. 470, 479 (1930) (citations omitted). Grey "was not at liberty to prosecute [her claim] by piecemeal, as by presenting a part only of the available grounds and reserving others for another suit, if failing in that." Id.

III. Conclusion

We, as witnesses to the many good works and admirable practices of the vast majority of lawyers who appear before us, nonetheless from time to time encounter an attorney whose practices at best leave much to be desired, and at worst, are worthy of the ire which society is quick to heap upon members of our profession. It is unclear from the record what has prompted Grey's pursuit of this litigation. What is clear is that it should end here. The Order of the District Court will be affirmed.

TO THE CLERK OF THE COURT:

Kindly file the foregoing Opinion.

/s/ Maryanne Trump Barry
Circuit Judge

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No.02-4553

CAITLIN M. GREY,

Appellant

v.

STATE OF NEW JERSEY; SCOTT DENNIS;
JOHN OR JANE DOES 1-10*

*(Amended per Clerk's Order dated 1/31/03)

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
D.C. Civil No. 02-cv-00552
District Judge: The Honorable Joseph H. Rodriguez

Submitted Under Third Circuit LAR 34.1 (a)
November 21, 2003

Before: RENDELL, BARRY, and MAGILL, [1] Circuit Judges

JUDGMENT

[1] The Honorable Frank J. Magill, Senior Circuit Judge, United States Court of Appeals for the Eighth Circuit, sitting by designation.

This cause came on to be heard on the record from the United State District Court for the District of New Jersey and was submitted on November 21, 2003.

On consideration whereof, it is now here ordered and adjudged by this Court that the Order of the District Court be and hereby is affirmed. Costs taxed against appellant.

All of the above in accordance with the Opinion of this Court.

Attest:

Marcia M. Waldron, Clerk

Dated: December 8, 2003

Appendix B

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CAITLIN M. GREY,
Plaintiff,

v.

STATE OF NEW JERSEY,
SCOTT DENNIS, and
JOHN or JANE DOES 1-10,
Defendants.

Hon. Jose H. Rodriguez
Civil Action No- 02-552

ORDER

Plaintiff Caitlin M. Grey, an attorney, originally brought this action in the Eastern District of Pennsylvania against her former client, Defendant Scott Dennis, the State of New Jersey, and several unnamed Defendants, asserting claims under 42 U.S.C. § 1983 and seeking a declaratory judgment to invalidate an award by a New Jersey State arbitration committee against Grey in connection with an attorney fee dispute between Grey and Dennis. The case was transferred to the District of New Jersey by an order dated December 26, 2001, entered on the docket here February 4, 2002. Presently before the Court are Defendant State of New Jersey's motion for judgment on the pleadings [12], Defendant State of New Jersey's motion for an order striking the purported Amended Complaint and dismissing the Complaint in its entirety [16], Defendant Dennis' motion for summary judgment [19], and Plaintiffs cross-motion for judgment on the pleadings [21]. Because this Court is without subject matter jurisdiction to hear this case, however, the matter will be dismissed.

I. BACKGROUND[1]

Plaintiff Caitlin Grey is a lawyer licensed to practice in the State of New Jersey. She is also licensed to practice in the Commonwealth of Pennsylvania. (Cmpl. ¶ 1.) Between 1990 and 1995, Grey was retained by Defendant Scott Dennis to handle certain legal matters arising in Pennsylvania, including a real estate transaction and a negligence action against a property inspection service. (Id., ¶ 6.) During the time Grey represented Dennis in Pennsylvania. Dennis left the country, and, for reasons that remain disputed by the parties. Dennis' claims were dismissed for lack of prosecution. (Id., Ex. 1, 2.)

Upon Dennis' return to the country, a dispute arose concerning Grey's attorney's fees. (Id., Ex. 1.) On January 21, 1996, Grey sent Dennis notice of his right to have their fee dispute arbitrated through a procedure established under the New Jersey Court Rules (the "N.J. Attorney Fee Dispute Arbitration Committee System").[2] (Ex. A to Att'y Certification

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1 This section, in large part, has been adopted from Judge Surrick's December 26, 2001 Memorandum & Order transferring the case to this Court.

2 The notice was sent in accordance with New Jersey Court Rule 1:20A-6, entitled Pre Action Notice to Client. (Id.) Pursuant to the power vested in the New Jersey Supreme Court under Article 6, Section 2, Paragraph 3 of the New Jersey Constitution, the State of New Jersey has established arbitration committees under N.J. Court Rule 1:20A to resolve attorney fee disputes between attorneys licensed to practice law in New Jersey and their clients. See N.J. Ct. R. 1:20A; Guralnick v. Supreme Court of New

in Supp. of State's Mot. for J. on Pleadings; Ex. 1 to Att'y Certification in Supp. of Dennis Mot.)

Supp. of Dennis Mot.) The notice was sent on Grey's New Jersey letterhead. (Id.) In particular, the notice informed Dennis that, if he wished to avail himself of the right to fee arbitration, he had to file the proper form with the New Jersey Supreme Court District IV Fee Arbitration Committee Secretary, requesting that the dispute be arbitrated. (Id.)

In February 1996, Dennis filed an "Attorney Fee Arbitration Request Form" with the Arbitration Committee, pursuant to New Jersey Court Rule 1:20A-3(b), et seq. (Cmpl. ¶ 8, Ex. 1.) On February 26, 1996, the Secretary of the Arbitration Committee served Dennis' request for fee arbitration on Grey with instructions that Grey provide an answer within twenty days on the designated form with payment of the appropriate filing fee. (State's Br. in Supp. of Mot. for J. on Pleadings at ¶ 4; Ex. 1 to Att'y Certification in Supp. of Dennis Mot.; Ex. A to June 6, 2002 Certification of State's Att'y.) After at least two additional attempts by the Secretary to gain Grey's compliance with the New Jersey Court Rules, (see State's Br. in Supp. of Mot.

Jersey, 747 F. Supp. 1109 (D.N.J. 1990); Kelley Drye & Warren v. Murray Industries, Inc., 623 F. Supp. 522 (D.N.J. 1985) (validating application of arbitration rule to attorney, and reasoning that "[n]o one has an absolute right to practice law, and the State may impose reasonable conditions and limitations upon those who wish to exercise that privilege").

For J. on Pleadings at ¶ 4; Ex. 3 to Att'y Certification in Supp. of Dennis Mot.; Ex. B to June 6, 2002 Certification of State's Att'y), Grey filed an "Attorney Fee Response" form on March 31, 1996, which she contends was "substantially in compliance" with the requirements of the New Jersey Court Rules. (Cmpl., ¶ 13, Ex. 2.)

Grey's response was deemed not in compliance with Rules. On April 4, 1996, the Secretary declined to accept Grey's submission because it still did not provide the information necessary to decide the fee dispute.[3] (State's Br. in Supp. of Mot. for J. on Pleadings at ¶ 6; Ex. 3 to Att'y Certification in Supp. of Dennis Mot.; Ex. B to June 6, 2002 Certification of State's Att'y.) The Secretary then informed Grey that if the needed information was not submitted within the time remaining on her extension, she would be precluded from participating in the arbitration pursuant to N.J. Court Rule l:20A-3(b)(2). (State's Br. in Supp. of Mot. for J. on Pleadings at ¶ 6; Ex. 3 to Att'y Certification in Supp. of Dennis Mot.; Ex. B to June 6, 2002 Certification of State's Att'y.) Defendants contend that Plaintiff did not comply, and that the Secretary therefore precluded Grey from participating or presenting evidence at the fee arbitration hearing. (Cmpl. ¶ 15, Ex. 3; State's Br. at ¶ 6. Ex. 3 to Att'y Certification in Supp. of Dennis Mot.; Ex. B to June 6, 2002 Certification of State's Att'y.)

On June 18, 1996, a three-member panel of the Arbitration

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3 Judge Surrick previously found that Grey failed to provide the total amount she had billed her client, Dennis; she also failed to provide the Arbitration Committee with an itemized bill that was submitted to the client, or copies of the time records she claims to have kept. See December 26, 2001 Mem. & Order at n.2, citing Cmpl., Ex. 1.

Committee met and, after reviewing the record and testimony of Dennis, concluded that Grey should return to Dennis $10,865.16 of the $13,724.28 that Dennis had paid her. (State's Br. at ¶ 7.) Accordingly, the Arbitration Committee entered an award against Grey in the amount of $10,865.16. (Cmpl., Ex. 3; Ex. 4 to Att'y Certification in Supp. of Dennis Mot.)

On September 3, 1996, Grey filed an appeal of the Committee's decision with the Disciplinary Review Board of the Supreme Court of New Jersey ("DRB") as permitted under N.J. Court Rule 1:20A-3(c) and (d). Grey argued that the Committee failed to substantially comply with the procedural requirements of N.J. Court Rule 1:20A and that there was a palpable mistake of law by the Committee which on its face was gross, unmistakable, or in manifest disregard of applicable law and which had led to an unjust result. (Ex. 3 to Att'y Certification in Supp. of Dennis Mot.; State's Br. at ¶ 10; see N.J. Ct. R. 1:20A-3(c)(4).) On November 22, 1996, the DRB affirmed the Committee's decision and dismissed Grey's appeal. (State s Br. at ¶ 11; Ex. 3 to Att'y Certification in Supp. of Dennis Mot..)

On January 24, 1997, Dennis sought an Order to Show Cause in the Superior Court of New Jersey, Law Division to enforce the fee award by entry of civil judgment. (Pl.'sBr. at p. 8.) Default Judgment in the amount of $10,865.16 was entered against Grey and in favor of Dennis on April 16, 1997. (Id.) Grey's June 12, 1997 motion for relief from the default judgment was denied on September 26. 1997. (Id.) On November 10, 1997, she filed a notice of appeal with the Superior Court of New Jersey, Appellate Division, which court reversed and remanded the case to the Law Division on October 1, 1998 with instructions to vacate entry of default. (Id. at p. 8-9.) Following oral argument, on July 29, 1999, the Law Division judge upheld the

imposition of judgment on the fee award, holding that no attack on the fee arbitration proceedings would be permitted. (Id. at p. 9.) The Appellate Division, in turn, upheld the Law Division decision and the decision of the fee arbitration committee. (Id. at p. 9-10.) Grey's October 19, 2000 petition for certification was denied by the New Jersey Supreme Court on February 15. 2001. (Pl.'s Br. in Opposition to State's Mot. and in Supp. of Cross-Mot. for J. on the Pleadings, pp. 5, 10; Ex. 1.)

Plaintiff characterizes the law of the case in New Jersey as holding that no State court may review the proceedings of a fee dispute arbitration committee for any reason. (Id. at p. 14.) This case was filed as a challenge to that holding. (Id. at p. 10.)

II. THIS ACTION

On March 30, 2001, Grey filed her Complaint in the Eastern District of Pennsylvania alleging violation other rights under the Fourteenth Amendment and 42 U.S.C. § 1983.[4] In

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4 The Court has analyzed the claims set forth in the Complaint originally filed in the Eastern District of Pennsylvania. Although Plaintiff submitted a second Complaint to the Clerk of this Court on May 21, 2002, the time within which to seek amendments to the pleadings or to add new parties expired on March 22, 2002. (March 15, 2002 Scheduling Order at ¶ 2.) In fact, the dispositive motion deadline, April 30, 2002, had also passed by the time Plaintiff sent in the second Complaint, attempting to add new parties to the caption. Plaintiff never filed a motion to amend under Fed. R. Civ. P. 15(a). Further, no application for an extension of time was made in writing

Count I of the Complaint, Grey seeks a declaratory judgment that Defendants violated her Fourteenth Amendment rights. She claims that the New Jersey's Arbitration Committee improperly asserted jurisdiction over her fee dispute because New Jersey cannot require the arbitration of an attorney fee dispute between an attorney licensed in Pennsylvania and a client who resides in Pennsylvania, based solely on the fact that the attorney is also licensed in New Jersey, when the dispute arose from representation that took place in Pennsylvania and not New Jersey. In Count II of the Complaint, Grey again seeks a declaratory judgment that Defendants violated her Fourteenth Amendment rights because New Jersey precluded her from participating in the arbitration hearing. In Count III of the Complaint, Grey seeks relief under Section 1983 against Defendants for allegedly acting under the color of state law by establishing a policy or custom which, in its application, violated her right to due process and equal protection. In addition, Count III includes a claim that Defendants conspired to violate Plaintiffs rights by wrongly asserting jurisdiction over the fee dispute-arid excluding her from the hearing.

III. MOTION FOR JUDGMENT ON THE PLEADINGS

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prior to the expiration of the period sought to be extended, (see March 15, 2002 Scheduling Order at ¶ 6); thus, no good cause was shown and no extension was granted. The Court will not simply accept the second Complaint sent to the Clerk's Office as an Amended Complaint. In any event, the addition of new parties would not have an effect on the decision contained in this Opinion.

Motions for judgment on the pleadings under Federal Rule of Civil Procedure 12(c) are treated similarly to motions to dismiss filed pursuant to Federal Rule of Civil Procedure 12(b)(6)–judgment will not be entered unless the moving party establishes that no genuine issue of material fact exists and that he is entitled to judgment as a matter of law. Society Hill Civic Ass'n v. Harris, 632 F.2d 1045, 1054 (3d Cir. 1980) (citation omitted). In considering the motion, the court must "view the facts presented in the pleadings and the inferences to be drawn therefrom in a light most favorable to the nonmoving party." Id. The State of New Jersey, on behalf of the State, the District IV Fee Dispute Arbitration Committee, and the DRB, has brought a motion for judgment on the pleadings, seeking to have this Court dismiss the Complaint based upon (1) lack of subject matter jurisdiction due to Eleventh Amendment immunity; (2) lack of subject matter based on the Rooker-Feldman doctrine; (3) the defense of absolute immunity from suit for members of the fee arbitration committee and the DRB; (4) the defense of statute of limitations; and (5) the theory that Plaintiff waived any right to object to New jersey's jurisdiction over the fee dispute because she chose her forum when she invited Dennis to have the dispute arbitrated in New Jersey.

Defendant Dennis has also tiled a motion to dismiss the Complaint against him for failure to state a claim upon which relief may be granted. The motion was noticed as one for summary judgment because extraneous materials were submitted to the Court.

IV. DISCUSSION

As an initial matter, the Court notes that a lack of subject

matter jurisdiction may be raised at any time in the litigation and, of course, subject matter jurisdiction may not be waived. In re Orthopedic "Bone Screw" Products, 132 F.3d 152, 155-56 (3d Cir.1997).

Under the Rooker-Feldman doctrine, this Court is precluded from entertaining an action, that is, the Court lacks subject matter jurisdiction, if the relief requested would effectively reverse a State court decision or void its ruling. Whiteford v. Reed, 155 F.3d 671, 674 (3d Cir. 1998) (citing FOCUS v. Allegheny County Court of Common Pleas, 75 F.3d 834, 840 (3d Cir. 1996)). That is, lower courts cannot sit in direct review of decisions of a State tribunal; review of such adjudications must be pursued in the State appellate system, and, if necessary, by way of review of a State's highest court by the United States Supreme Court. See District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482 (1983) ("a United States District Court has no authority to review final judgments of a state court in judicial proceedings:); Rooker v. Fidelity Trust Co., 263 U.S. 413, 416 (1923) (holding that, even if a State court decision was wrong, only the Supreme Court has the power to reverse or modify that judgment). The Rooker-Feldman doctrine is based on the statutory foundation of 28 U.S.C. § 1257[5] and the

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5 28 U.S.C. § 1257 provides:

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution,

principle that only the United States Supreme Court, and not a lower federal court, has jurisdiction to review a State court decision. In Re Diet Drugs Prod. Liab. Litig., 282 F.3d 220, 240 (3d Cir. 2002); Parkview Assoc. P'ship v. City of Lebanon, 225 F.3d 321, 324 (3d Cir. 2000); E.B. v. Verniero. 119 F.3d 1077, 1090 (3d Cir. 1997).

In explaining the jurisdictional bar, the Third Circuit has described the Rooker-Feldman doctrine as precluding lower federal court jurisdiction over claims that were actually litigated or those "inextricably intertwined" with adjudication by a State's courts. Parkview Assoc.. 225 F.3d at 325 (citing Gulla v. North Strabane Township. 146 F.3d 168, 171 (3d Cir. 1998); Blake v. Papadakos. 953 F.2d 68. 71 (3d Cir. 1992); Port Auth. Police Benevolent Ass'n. Inc. v. Port Auth., 973 F.2d 169, 178 (3d Cir. 1992) (extending application of the doctrine to decisions by lower state courts)). See also Guarino v. Larsen. 11 F.3d 1151 (3d Cir. 1993). The Circuit has further explained that "a federal action is inextricably intertwined with a state adjudication, and thus barred in federal court under Feldman, '[w]here federal relief can only be predicated upon a conviction that (lie state court was wrong."' Parkview Assoc., 225 F.3d at 325 (quoting Centifanti v. Nix, 865 F.2d 1422, 1430 (3d Cir. 1989) (quoting Pennzoil Co. v. Texaco Inc.. 481 U.S. 1, 25 (1987) (Marshall, J., concurring))). Finally, if a plaintiff's claims in federal court are inextricably

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treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held by authority exercised under, the United States.

intertwined with a previous State court adjudication, the district court lacks jurisdiction over those claims even if they were not raised in the State court. Id. at 327.

In the matter at hand, this Court finds that the Plaintiff will not be permitted to avail herself of federal jurisdiction by assembling the claims that have already been asserted and rejected in the State court system along with those which could have been brought in State court when the disputes arising from the transaction between Dennis and Grey were litigated. Grey's asserted constitutional issues should have been raised in the State court.[6] Because Plaintiffs claims in this lawsuit are inextricably intertwined with the State court's adjudication, she is not now free to bring her claim to the federal court in the hopes of obtaining a more favorable outcome.

Plaintiffs complaint seeks: (1) a declaration that Plaintiff's Fourteenth Amendment rights were violated when the State of New Jersey wrongfully asserted jurisdiction over Dennis' fee arbitration request, facilitating an adverse determination in the fee arbitration which caused prejudice to Plaintiff; (2) a declaration that Plaintiffs Fourteenth Amendment rights were

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6 The Court is mindful that Defendant Dennis filed suit for legal malpractice in the Court of Common Pleas of Pennsylvania, and that he has filed a motion in the New Jersey Superior Court, Law Division for reinstatement and entry of judgment. (Pl.'s Br. at p. 10.) The Court understands that the New Jersey State court matter has been stayed during the pendency of the instant motions in this Court, (id. at p. 11), but that does not give this Court subject matter jurisdiction.

violated when she was precluded from participating in the fee arbitration hearing, again facilitating an adverse determination in the fee arbitration which caused prejudice to Plaintiff; and (3) costs and attorney's fees under 42 U.S.C. § 1983 for the conspiracy by Defendants to violate Plaintiffs rights in applying the custom and policy of the arbitration process, resulting in damages of "an adverse ruling against her." (Pl.'s Br., p. 5.)

Plaintiff has characterized the decisions of the State courts as having found that no attack will be permitted on the fee award made by the New Jersey Fee Arbitration Committee. The Law Division judge has characterized the prior rulings in a similar fashion. (See Tr. of August 3, 2001 State court proceeding, attached as Ex. 2 to Pl.'s Br.) Thus, in seeking a declaratory judgment that Defendants violated her Fourteenth Amendment rights because New Jersey precluded her from participating in the arbitration hearing. Plaintiff is asking this Court, essentially, to reverse the State courts' decisions and allow an attack on the fee award made by the New Jersey Fee Arbitration Committee. The fact that Plaintiff was sanctioned by the arbitration committee, in the form of precluding her participation, was presented to the State courts and actually litigated.

The issue of whether New Jersey ever had the right to arbitrate an essentially Pennsylvania fee dispute, or, in other words, whether the Fee Arbitration Committee had jurisdiction over the subject matter, is inextricably intertwined with the State court adjudication.[7] A finding by this Court that the State of

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7 In fact it appears that the Law Division judge presiding over the State court litigation has invited briefing on the issue of whether New Jersey ever had the right to

New Jersey wrongfully asserted jurisdiction over Dennis' fee arbitration request would void the rulings of the Fee Arbitration Committee, DRB, the Superior Court of New Jersey, Law Division, the Superior Court of New Jersey, Appellate Division, and the New Jersey Supreme Court. This Court is without power to make such a determination because doing so would constitute a determination that the State court judgments were erroneously entered-as there was no jurisdiction- and would render the State judgments ineffectual. To the extent that she seeks further relief in Count III of the Complaint beyond the declaratory judgments,[8] the Court sees no avenue for redressing her claim, as Plaintiffs constitutional assertions are inextricably intertwined with the State courts' adjudication.

The Court has considered Plaintiffs late submission in opposition to the State's argument that the case must be dismissed based on the Rooker-Feldman doctrine. Although Plaintiff states therein that she seeks a holding that New Jersey has no authority to regulate the conduct of attorneys licensed in Pennsylvania when they render services on Pennsylvania legal matters for Pennsylvania clients, her complaint does not support such a general prayer for relief. The Court has attempted to identify the nature of the specific type of relief sought in this

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arbitrate an essentially Pennsylvania fee dispute, i.e., whether the Fee Arbitrate Committee had jurisdiction over the subject matter. (Tr. of August 3, 2001 State court proceeding, attached as Ex. 2 to Pl.'s Br. at pp. 11, 16-18.)

8 In opposing the State's motion on Eleventh Amendment immunity grounds. Plaintiff conceded that she is not seeking monetary relief.

case, see Boyce v. Dembe, 47 Fed. Appx. 155, 158 (3d Cir. 2002), and has found that Plaintiff has not mounted a general challenge to the State's administrative rules, practices, or procedures. Rather, Plaintiff is challenging allegedly unconstitutional acts to which she was subjected and, ultimately, she challenges the judgments in her case. The relief Plaintiff seeks here is barred by Rooker-Feldman.

Plaintiff farther argues that Rooker-Feldman does not bar her claims because she did not previously raise the constitutional questions asserted in her Complaint. She should have. See Parkview Assoc.. 225 F.3d at 327. There was ample opportunity for her to do so in the State court system, even if she had been previously precluded from participating in the arbitration.

V. CONCLUSION

In summary, because Plaintiff is asking this Court, in essence, to review adverse decisions handed down by the State courts, the Court has no subject matter jurisdiction over the case based upon the Rooker-Feldman doctrine, and the Complaint must be dismissed for lack of jurisdiction.

Accordingly,

IT IS ORDERED on this 27th day of November, 2002, that Defendant State of New Jerseys motion for judgment on the pleadings [12] is hereby GRANTED, and the Complaint must be dismissed for lack of subject matter jurisdiction.

IT IS FURTHER ORDERED that Defendant State of New Jersey's motion for an Order striking the purported Amended Complaint and dismissing the Complaint in its entirety [16] is hereby DISMISSED AS MOOT.

IT IS FURTHER ORDERED that Defendant Dennis'

motion for summary judgment [19] is hereby DISMISSED AS MOOT.

IT IS FURTHER ORDERED that Plaintiffs cross-motion for judgment on the pleadings [21] is hereby DISMISSED AS MOOT.

JOSEPH H. RODRIGUEZ
U.S.D.J.

Certificate of Service

Michael S. Kimm, Esq., certifies that the foregoing petition was served and filed as follows:

3 copies each to all counsel of record
40 copies and original to the clerk's office

by regular mail service.

Dated: March 8, 2004

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Michael S. Kimm